

General Applicability Public Interest Adjustment Period Waiver from Application of the Build America, Buy America Provisions for Recipients of Treasury RESTORE Act, Direct Component Grants

AGENCY: U.S. Department of the Treasury (Treasury)

ACTION: Notice

SUMMARY: In accordance with the Build America, Buy America Act (“Act”), this notice advises that Treasury is proposing a general applicability public interest adjustment period waiver from application of the Buy America Domestic Content Procurement Preference (“Buy America Preference,” or “BAP”) to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (“RESTORE Act”), Direct Component grants under assistance listing number, 21.015, provided from the Gulf Coast Restoration Trust Fund (“Trust Fund”) to eligible state and local governments in the Gulf of Mexico Region. Treasury is requesting a six-month waiver as applied to the iron and steel, manufactured products, and construction materials requirements of the Act. In accordance with the Act, Treasury has found that this general applicability adjustment period waiver is in the public interest to allow Treasury sufficient time to prepare to implement the Act for the long-term while continuing to keep projects moving and preventing immediate delays to critically important projects to revive and sustain the ecosystems and economy of the Gulf Coast Region, including activities to support disaster preparedness and manage climate risk by building resilience and promoting sustainable economic development.

Treasury is proposing this waiver not an *alternative* to increasing domestic production, but as an important *tool* to fill our knowledge gaps and implement the Buy American provisions in the most efficient manner in order to promote investment in our domestic manufacturing base, strengthen critical supply chains, and position U.S. workers and businesses to compete and lead globally in the 21st century. Treasury understands that advancing Made in America objectives is a long game and the Agency plans to move forward with sufficient information to implement the new requirements in a way that maximizes coordination and collaboration to support long-term investments in domestic production. The waiver period will provide Treasury sufficient time to work collaboratively with other federal agencies and learn from existing processes established for domestic preference for iron and steel. Treasury is proposing to use the waiver time to leverage the lessons learned, templates, guidance, and policies and procedures developed by the Environmental Protection Agency (EPA) and other federal agencies that have long applied domestic preference to iron and steel; the Office

has already met with EPA and started this process. Treasury is also looking to leverage the work OMB's Made in America Office is doing to identify domestic sources for these materials. Importantly, Treasury is proposing to use the six-month period to work directly with RESTORE Act, Direct Component recipients to fill knowledge gaps and understand the common needs for iron and steel products, construction materials and manufactured products. Treasury will use the time to identify needed information collections and get them approved through OMB's Paperwork Reduction Act (PRA) process. Treasury will work directly with recipients to identify and document the availability of required goods in the Gulf Coast Region, including any specific supply chain challenges the Region experiences due to their unique vulnerability to hurricanes. Treasury will use the information gained from close engagement with other federal agencies, its financial assistance recipients, and OMB to determine the appropriate scope of additional waivers that may be necessary to ensure projects stay on time, on task and on budget. Treasury will ensure that any waivers issued under the Act are balanced, practical, and an efficient tool to promote both American manufacturing and timely infrastructure investment.

Furthermore, Treasury is committed to building the Agency's internal capacity to implement the new requirements, including hiring staff or contractors, while continuing work on other mission-critical objectives to keep projects moving, including standing up a new online grants management system, which will require dedicated staff resources for development, testing, data migration, training, and system launch. Treasury will use the adjustment period to build our internal capacity and the capacity of our external stakeholders, including providing training to subrecipients and contractors in these requirements. This adjustment period will give RESTORE Act, Direct Component program recipients and subrecipients, the majority of which are small, local governmental entities, time to put in place their own policies, procedures, and systems to collect and submit required information, identify needs for project- or product-specific waivers; increase staff capacity to handle the increased workload; educate construction contractors about these requirements; and participate in a Treasury-led working group to guide BAP implementation.

DATES: Comments on the proposed waiver set out in this document are due on or before June 17, 2022. This waiver is effective for six months as applied to the iron and steel, and construction materials and manufactured products requirements of the Act, after the effective date of the waiver, unless, after reviewing any comments, Treasury publishes a subsequent notice on its website explaining any changes to its determination to issue the waiver.

FOR FURTHER INFORMATION CONTACT: Interested persons may submit comments via email. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by Treasury, and enables Treasury to make them immediately available to the public. Commenters should follow the instructions provided on the website (<https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act/restore-act-buy-america-preference>) to submit comments electronically. Please submit any questions, comments, or concerns to restoreact@treasury.gov c/o Bridget Cotti-Rausch.

Public Inspection of Comments. All properly submitted comments and communications submitted to Treasury will be made available for public inspection upon request. Weekly copies of all submissions will be made available for inspection and download at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act/restore-act-buy-america-preference>.

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America Act

The Build America, Buy America Act was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58. The Act establishes a domestic content procurement preference, the BAP, for Federal financial assistance programs that fund infrastructure. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, Treasury must ensure that none of the funds made available for infrastructure projects may be obligated by the Treasury's Office of Gulf Coast Restoration ("the Office") unless it has taken steps to ensure that "the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." In section 70912, the Act further defines a project to include "the construction, alteration, maintenance, or repair of infrastructure in the United States" and includes within the definition of infrastructure those items traditionally included along with buildings and real property.

II. Treasury's Progress in Implementation of the Act

Treasury views the Act as an opportunity to create domestic manufacturing jobs, strengthen supply chains, and help lower costs in the Gulf Coast Region. Since the enactment of the Act, Treasury has worked diligently to prepare to implement the BAP. Consistent with the requirements of section 70913 of the Act, Treasury has produced a report that identifies and evaluates all of

Treasury's Federal Financial Assistance programs with potentially eligible uses of funds that include infrastructure as defined by the Act to determine which programs would be in compliance with the BAP and which would be considered inconsistent with section 70914 of the Act and thus "deficient" as defined by section 70913(c) of the Act. To prepare the report, the Office consulted with RESTORE Act grant recipients to identify items that are used in projects that may be relevant to any of the six critical supply chains. Treasury's report was submitted to Congress and the Office of Management and Budget (OMB) and published in the Federal Register within 60 days after the date of enactment of the Act, on January 21, 2022. Specifically, Treasury published the required report in a notice entitled "Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act" in compliance with section 70913 (87 FR 3385). Since issuing the report, Treasury has held regular meetings with Departmental and programmatic offices and consulted with OMB to plan to implement the requirements of the BAP. Treasury's Office of the General Counsel coordinated with the OMB Counsel to determine whether the BAP applies to the RESTORE Act grant programs or whether the RESTORE Act grant programs are exempt from these requirements as "post disaster or emergency response expenditures" and determined that Treasury RESTORE Act grants were not exempt. Treasury has been an active participant in the Made in America Office's Buy America Preference Working Group. Treasury also proactively contacted the program offices for the EPA State Revolving Fund, which has implemented domestic preference requirements for iron and steel for water systems projects (just one of the many eligible activities under the Direct Component program), to identify lessons learned and best practices. Discussions with EPA informed this request for a six-month adjustment period, as EPA indicated that even implementing the requirements for iron and steel requires significant staff and contractor resources, as well as robust policies, procedures, and systems. The Office also learned through these discussions that few resources exist across the federal government to support the implementation of the construction materials and manufactured products requirements of the Act. Treasury looks forward to reviewing the responses to the Request for Information (RFI) recently issued by OMB to identify domestic sources of construction materials.

To allow sufficient time to build resources and internal capacity that leverage these collaborative efforts, Treasury requires a six-month adjustment period for all requirements of the Act, as the Office applies the lessons learned from other agencies implementation of iron and steel products, as well as the results of the RFI, and further ramps up staff or contractual capacity in order to minimize delays for critically important ecosystem and economic restoration projects, including activities related to

disaster preparedness, mitigating climate risk and building resilience, and promoting sustainable economic development and job creation. To promote coordination with recipients of our Federal financial assistance program, Treasury has stood up a Treasury RESTORE Act Domestic Procurement Working Group to solicit suggestions from RESTORE Act, Direct Component recipients to develop the best approach for implementation of these new requirements, and to fill knowledge gaps and better understand and document the demand for domestically produced iron and steel, manufactured products, and construction materials in the Gulf Coast Region.

III. Waivers

Under section 70914(b), Treasury has authority to waive the application of a domestic content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. Section 70914(c) provides that a waiver under 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days.

Information on this waiver may be found at the webpage at this link:

<https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act/restore-act-buy-america-preference>.

IV. Public Interest in a General Applicability Waiver of Buy America Provisions

The Build America, Buy America provision of the law represents a monumental change to how the nation builds things with Made in America products and Treasury understands that bringing back domestic manufacturing and advancing these objectives is in the nation's best interest. Treasury is similarly authorized under the RESTORE Act to build a resilient workforce in the Gulf Coast Region; eligible activities for RESTORE Act, Direct Component projects include those that enhance workforce development and job creation. Treasury is eager to realize these shared goals and believes success will be achieved through collaboration with other agencies and close coordination with RESTORE Act recipients. In this notice, Treasury is seeking comments on its proposed general applicability public interest adjustment period waiver from the BAP requirements for Treasury's RESTORE Act, Direct Component grant recipients to provide Treasury with sufficient time to

engage in close coordination with the Office’s stakeholders. Treasury will use the proposed waiver period to fill knowledge gaps and build the internal and external capacity necessary to build processes that work long into the future. The six-month waiver would apply to all the RESTORE Act, Direct Component grants that fund infrastructure projects that require the use of iron and steel, manufactured products, and construction materials, as outlined in section 70914 of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58. The waiver would apply for six months from the effective date of the waiver, unless, after reviewing any comments, Treasury publishes a subsequent notice on its website explaining any changes to its determination to issue the waiver. The waiver would apply for new awards and amendments to existing awards obligating additional funds for infrastructure projects in accordance with section 70935 of the IIJA and OMB Memorandum M-22-11.

As indicated in Treasury’s Federal Register Notice (<https://www.federalregister.gov/documents/2022/01/21/2022-01169/federal-financial-assistance-infrastructure-programs-subject-to-the-build-america-buy-america>), Treasury’s RESTORE Act programs did not previously implement mandatory domestic preference requirements, though Treasury has always included language in the RESTORE Act Standard and Program-Specific Terms and Conditions encouraging recipients to purchase American-made equipment and products, in accordance with the procurement standards included in 2 CFR Part 200. Treasury’s adjustment period waiver request is necessary to provide the Office sufficient time to meet the ambitious goals to implement the new requirements.

Treasury believes that increasing domestic supply for infrastructure projects is in the long-term public interest; Treasury has already seen how supply chain disruptions have negatively impacted construction project schedules and budgets. However, in the near term, immediate application of these requirements would be inconsistent with the public interest for several reasons.

First and foremost, Treasury recipients have indicated that immediately applying these requirements—right before the 2022 hurricane season and prior to having sufficient time to engage with RESTORE Act recipients to identify domestic sources, training subrecipients and contractors in these requirements, identifying needed information collections, and hiring staff or contractors (at Treasury and recipient or subrecipient organizations) to manage the increase in workload — would lead to project delays and be deleterious to the timely implementation of ecosystem restoration projects and economic development of the Gulf Coast in the near term. Examples of RESTORE

Direct Component infrastructure projects that build resilience and promote disaster preparedness include building up levees and other flood protection structures; increasing the capacity of stormwater systems and constructing retention ponds to handle increased runoff; and rebuilding or strengthening beaches, dunes, coral reefs, and other ecosystems that were damaged by recent natural disasters but can play an important role in mitigating the impact of future disasters. Please see Treasury's webpage "[Addressing the Climate Crisis: How Treasury Partners with RESTORE Act Recipients to Build Climate Resilience](#)" for more details on how particular Direct Component-funded projects support some of the Agency's mission-critical strategic objectives.

Each RESTORE Act, Direct Component project could potentially involve hundreds or thousands of components qualifying as manufactured products or construction materials, for which the timely availability of sufficient quantities of these categories of goods at a reasonable cost has yet to be determined, thus necessitating building the capacity to process project- or product-specific nonavailability or unreasonable cost waivers. Through initial engagement with RESTORE Act Direct Component recipients, we learned few projects require elements relevant to the six critical supply chains (with exception of semiconductors, in some cases), though many iron and steel products (including rebar, manhole covers, sheet metal, steel beams) are used commonly in construction projects, and the universe of possible construction materials and manufactured products is largely unknown because those categories of goods are still being defined, but may include lumber, PVC, and water treatment pumps. Further, the frequency of hurricanes in the region creates annual uncertainty in supply costs and availability. Treasury is requesting the waiver to provide sufficient time to address these gaps in our knowledge base and anticipates that without an adjustment period, there would be lengthy delays in carrying out these critical projects in the Gulf Coast Region.

In developing this request, Treasury also considered the capacity of external RESTORE Act, Direct Component eligible entities to implement the requirements of the Act and the burden that may be placed on the Gulf Coast communities benefitting from the Trust Fund (either through direct awards or subawards), most of whom are small, local governmental and non-governmental entities. As of April 15, 2022, of the Gross Allocations available in the Trust Fund for the Direct Component, more than \$390 million has been obligated and approximately \$517 million of net allocations are available. The Estimated Trust Fund Gross Allocations Cumulative by the date of final deposit (in 2031) is estimated to be \$1.86 billion. Since the first deposit was made to the Trust Fund in 2015, the Office has obligated funds for more than 160 RESTORE Act, Direct Component grants. Of the total awards made to date under the RESTORE Act, Direct Component program,

ninety-four are made for construction activities, including for “infrastructure” as defined in the Act. Sixty percent of these obligations are for award amounts less than \$500,000.

During the waiver period, Treasury will use the time to engage closely with the RESTORE Act recipients and broader network of stakeholders to obtain adequate information concerning the types of information necessary to demonstrate compliance with the BAP requirements or to seek product- or project-specific waivers under the Act or to readily provide the public, especially small entities, with an opportunity to evaluate the burdens associated with the information to be collected. Treasury will take time to first solicit and then fully consider information from Direct Component-eligible entities about the types of information that could be necessary to either request a waiver or demonstrate compliance with the BAP requirements, the scope of other public interest waivers (e.g., small grant waivers, de minimis waivers), the entities’ capacity for implementing the new requirements, and their needs for additional guidance, before beginning the process of soliciting and considering public comments for its proposed new information collections related to BAP requirements. Our priority is to use waivers as a balanced, practical, and efficient tool to ensure projects stay on time, on task and on budget. By learning directly from RESTORE act entities, the Agency will be well-informed so that waivers from BAP will be limited, targeted, and conditional where appropriate. With knowledge of specific supply chain limitations in the Gulf Coast Region, Treasury will better plan for implementing waivers that are granted for specific items or specific periods of time to enable agencies, recipients, and the private market to build capacity. Additionally, as a result of engagement with RESTORE Act stakeholders, Treasury will be equipped to provide recipients and subrecipients of RESTORE Act, Direct Component awards with the opportunity to fully evaluate and comment on the proposed information collection for the implementation of the BAP requirements through the PRA clearance process.

This adjustment period will give the 47 eligible entities under the RESTORE Act, Direct Component program time to adjust planning and budget estimates for projects to be funded after the waiver period ends; build staff capacity around implementation of BAP; facilitate coordination with state and local governmental entities that have previously implemented domestic preference requirements; assist the Office in determining categories of iron and steel products, manufactured products, and/or construction materials that may require a nonavailability waiver; and raise awareness about the sources of domestically-produced iron, steel, manufactured goods, and construction materials that *are* available in the marketplace based on the results of OMB’s RFI (<https://www.federalregister.gov/documents/2022/05/26/2022-11296/construction-materials-used-in->

[federal-financial-assistance-projects-for-infrastructure-and-end](#)). RESTORE Act, Direct Component award recipients that pass-through award funds to subrecipients will also include the requirements for compliance with the BAP in subaward agreements with these subrecipient entities (e.g., municipalities, non-profits, academic institutions) pursuant to 2 CFR 200.101(b)(2). Therefore, the Office will also use the proposed waiver period to provide training and resources for recipients to educate subrecipients and prospective contractors to ensure compliance with the BAP requirements. These resources will include, but not be limited to, any guidance produced by OMB as a member of the Federal Acquisition Regulatory Council (FAR Council).

Finally, Treasury considered the Office's internal capacity to implement the new requirements and how implementation may impact the Office's ability to efficiently carry out other policy and programmatic priorities in accordance with the public interest. The Office appreciates the opportunity to advance Made in America objectives for the long term and is building the internal capacity, including hiring staff, to stand up and maintain processes that will advance domestic production and lower costs to complete projects in the Gulf Coast Region. The Office's current and new staff, possibly with contractual assistance, will implement BAP and be involved in conducting market research on product availability; coordinating with OMB; developing and conducting training for recipients, subrecipients, and contractors on the requirements; and reviewing, evaluating, posting, and approving or denying any project- or product-specific public interest, nonavailability and/or unreasonable cost waivers. Immediate implementation without these appropriate capacity-building measures could hinder the Office's core mission to rebuild the economy and ecosystems of the Gulf, keep projects moving, and accomplish several other critical initiatives, including standing up a new online grants management system for the receipt, review, and approval of applications for Federal financial assistance under the RESTORE Act by October 1, 2022. The system development effort requires substantial staff resources to ensure successful development, testing, data migration, user training, and system launch, further straining the Office's capacity to implement a major new policy. The Office is also initiating the required public comment process pursuant to the PRA to revise the approved information collections associated with migrating to the new grants system. Recipients of RESTORE Act, Direct Component financial assistance may also expend staff resources reviewing and commenting on the Office's PRA notice and will engage in learning the new system. The Office is in the process of hiring two additional FTEs and is seeking approval for contractual support to implement the BAP. Therefore, Treasury finds it is in the public interest to allow sufficient time to develop and launch the new grants

management system and increase internal staff capacity before implementing the BAP requirements, to ensure that there are limited delays in the delivery of services to RESTORE Act eligible entities due to capacity limitations.

During the proposed waiver period, Treasury expects that implementing partners will take rapid action to prepare for compliance with these new requirements. The Office plans to use the adjustment period to do all of the following to provide grantees with the information they need to build systems to source more products and ensure that the implementation of the BAP will accomplish the goals of the Act and result in the greater use of American-made items, goods, and materials in RESTORE Act, Direct Component infrastructure projects:

- Maintain active participation in the Made in America Office's Buy America Working Group;
- Continue to engage with other federal agencies, including EPA, to promote knowledge transfer and best practices;
- Maintain a detailed Buy America webpage that provides RESTORE Act recipients with up-to-date information and resources about Treasury's implementation of the requirements;
- Begin holding regular meetings of the RESTORE Act Buy America Implementation Working Group comprised of RESTORE Act, Direct Component grant recipients and subrecipients to fill knowledge gaps and plan for implementation of BAP (beginning June 2022). The Working Group will:
 - Identify and list common iron and steel products, construction materials, and manufactured products used for RESTORE Act, Direct Component construction projects to better understand the ongoing demand for domestically produced products in the Gulf Coast Region and the categories of iron and steel products, manufactured products, and/or construction materials that may not be available in the U.S.;
 - Identify and list common RESTORE Act, Direct Component construction project types and coordinate with OMB and Treasury OGC to clarify what RESTORE eligible project types qualify as "infrastructure" as defined under the Act;
 - Assess the need for other public interest waivers, including small grant and de minimis waivers;
 - Scope product needs and develop draft processes and new information collections to request project-specific nonavailability or unreasonable cost waivers to ensure that waivers are balanced, practical, and efficient tools to ensure projects stay on time, on task and on budget;

- Develop new information collections to demonstrate compliance with the BAP requirements, so that the Office may initiate any PRA process required for a new collection; and
 - Evaluate the recipients' capacity for implementing the new requirements, and their needs for additional guidance for recipients, subrecipients, and contractors regarding how to implement the BAP and ensure compliance with the law.
- Update Treasury's RESTORE Act Standard Terms and Conditions to include the new BAP requirements (June 2022);
- Draft new Frequently Asked Questions regarding OGCR's implementation of the BAP (July 2022);
- Fill the Office's two vacant positions (target date: September 2022) and procure contractual support for implementation of the BAP (December 2022), as funding permits;
- Work with Treasury's Office of General Counsel (OGC) to determine whether certain types of more limited general applicability public interest waivers will be required, such as a de minimis waiver, a small grants waiver, a minor components waiver, etc. (September 2022), and if so, work with the Treasury OGC to draft these waivers, solicit public comment, and publish these waivers (November 2022);
- Develop and provide guidance and trainings to eligible entities under the RESTORE Act, Direct Component program regarding how to include the BAP requirements in bid packages, submit waiver requests, conduct and document market research, monitor contractors for compliance, etc. (November 2022);
- Complete the required public comment process pursuant to the PRA to establish approved collection(s) for the information identified as necessary to establish compliance with the BAP (December 2022);
- Draft new policies and procedures governing the implementation of the BAP including review, posting, and approval of project- or product-specific waiver requests (December 2022); and
- Build out functionality to manage, review, process and approve or deny waiver requests in OGCR's new grants management IT system, if funds permit (if funds do not permit, implement manual process) (to be determined).

V. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M-22-11, titled, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” issued on April 18, 2022, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. Treasury’s analysis has concluded that this assessment is not applicable to this waiver, as this waiver is not based in the cost of foreign-sourced products.

VI. Limited Duration of the Waiver

Treasury remains committed to the successful implementation of the important BAP requirements for new awards and monetary amendments to existing awards for infrastructure projects under the Direct Component program, recognizing the unique relationship it has with state, and local eligible entities in the Gulf Coast Region receiving Treasury RESTORE Act, Direct Component grants for projects, including infrastructure projects. Treasury is committed to engaging in a timely consultation process as noted above.

From the effective date of this waiver, as determined by OMB’s acceptance, the waiver for iron and steel, manufactured products, and construction materials will remain in effect for six months, for all new awards and monetary amendments to existing awards for infrastructure projects under the Direct Component program for eligible Florida counties, Louisiana parishes, and Gulf Coast states as described in 31 C.F.R. § 34.302, or until Treasury publishes a notice extending the waiver or a final notice confirming the completion of Treasury’s stakeholder consultation process and announcing the termination of this general applicability waiver.

VII. Solicitation of Comments

As required under section 70914 of the Act, Treasury is soliciting comment from the public on the waiver. Please refer to the “DATES” and “FOR FURTHER INFORMATION CONTACT” sections of this notice for information on submission of comments.